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TRANSMITTAL FORM

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Total Number of Pages in This Submission (in Triplicate)	13

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Filing Date	October 12, 2000
First Named Inventor	Sie, John J. et al.
Art Unit	2611
Examiner Name	Kieu Oanh T Bui
Attorney Docket Number	19281-000700

ENCLOSURES *(Check all that apply)*

- ☐ Fee Transmittal Form
  - ☐ Fee Attached
- ☐ Amendment/Reply
  - ☐ After Final
  - ☐ Affidavits/declaration(s)
- ☐ Extension of Time Request
- ☐ Express Abandonment Request
- ☐ Information Disclosure Statement
- ☐ Certified Copy of Priority Document(s)
- ☐ Reply to Missing Parts/ Incomplete Application
  - ☐ Reply to Missing Parts under 37 CFR 1.52 or 1.53
- ☐ Drawing(s)
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- ☐ Petition to Convert to a Provisional Application
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- ☐ After Allowance Communication to TC
- ☐ Appeal Communication to Board of Appeals and Interferences
- ☒ Appeal Communication to TC **(Appeal Brief, (12 pages in triplicate)**
- ☐ Proprietary Information
- ☐ Status Letter
- ☒ Other Enclosure(s) (please identify below):

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Remarks The Commissioner is authorized to charge any additional fees to Deposit Account 20-1430.

No Fee Transmittal is attached as a prior Appeal Brief was filed and no further fees are due at this time.

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm Name	Townsend and Townsend and Crew LLP		
Signature	William J. Daley		
Printed name	William J. Daley		
Date	July 20, 2005	Reg. No.	52,471

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Attorney Docket No.: 19281-000700

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By: Sara B. McPeak
Sara B. McPeak

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re application of:

John J. Sie, et al.

Application No.: 09/687,138

Filed: October 12, 2000

For: LOCAL NEAR VIDEO ON DEMAND STORAGE

Customer No. 20350

Confirmation No.: 1028

Examiner: Bui, Kieu Oanh T

Technology Center/Art Unit: 2611

APPELLANT BRIEF UNDER 37 CFR §41.37

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Sir:

Appellants offer this Brief further to the Notice of Appeal mailed on June 21, 2005. This Brief is submitted in triplicate.

1. Real Parties in Interest

Privately held Starz Entertainment Group is the real party in interest of the above-identified application. Starz Entertainment Group is controlled by Liberty Media Corporation, a publicly-traded entity.

2. Related Appeals and Interferences

No other appeals or interferences are known that will directly affect, are directly affected by, or have a bearing on the Board decision in this appeal.

3. Status of Claims

Claims 1-20 are currently pending in the application. All pending claims stand rejected pursuant to a Non-Final Office Action mailed March 31, 2005. All pending claims were previously the subject of a rejection in a Final Office Action mailed March 15, 2004. The rejections of claims 1-20 are believed to be improper and are the subject of this appeal. A copy of the claims as rejected is attached as Appendix A.

4. Status of Amendments

The claims have been amended once in this case. The amendment was filed on October 17, 2003, in response to the Office Action mailed September 26, 2003. A subsequent amendment, dated September 14, 2004 in response to the Office Action mailed July 22, 2004, was not entered by the Office. Applicant has not resubmitted this amendment. This Appeal Brief is filed in response to the Office Action mailed on March 31, 2005.

5. Summary of Claimed Subject Matter

The invention generally relates to delivering a program using a near video on demand (NVOD) system, for example. Application, page 19, first full paragraph; Id. at Figures 9A-10B. In the embodiment of claim 1, a process for pre-storing a portion of a program distributed on a plurality of distribution conduits and in a linear schedule with staggered start times is described. Id. A first start time of the program is determined for a first distribution conduit, and a second start time of the program is determined for a second distribution conduit. Id. at Fig. 9A, reference designators 928 and 932; Id. at page 21, lines 21-22. A stagger time between the first start time and the second start time is also determined. Id. at page 19, lines 4-5;

Id. at page 21, lines 23-24. A segment of the program equal in length to the stagger time is stored. Id. at page 21, lines 23-24. A user request is detected to begin playing the program after the storing step has begun. Id. at page 21, lines 24-25.

In the embodiment of claim 10, a distribution program product for pre-storing a portion of a program distributed on a plurality of distribution conduits and in a linear schedule with staggered start times is disclosed. Id. at page 19, first full paragraph; Id. at Figures 9A-10B. First code determines a first start time of the program on a first distribution conduit. Id. at Fig. 9A, reference designators 928 and 932; Id. at page 21, lines 21-22. Second code determines a second start time of the program on a second distribution conduit. Id. Third code determines a stagger time between the first start time and the second start time. Id. at page 19, lines 4-5; Id. at page 21, lines 23-24. Fourth code stores a segment of the program about equal in length to the stagger time and begins storing the segment before a user requests the program. Id. at page 21, lines 23-24. A computer-readable medium stores the first, second, third, and fourth sets of codes. Id. at page 34, claim 10.

In the embodiment of claim 20, a method for pre-storing a portion of a program distributed on a plurality of distribution conduits and in a linear schedule with staggered start times is disclosed. Id. at page 19, first full paragraph; Figures 9A-10B. In one step, a first start time of the program on a first distribution conduit is determined. Id. at Fig. 9A, reference designators 928 and 932; Id. at page 21, lines 21-22. A second start time of the program on a second distribution conduit is determined. Id. At least one of the first and second distribution conduits comprises at least one of a digital channel, an analog channel, or a broadband network. Id. at page 20, lines 4-6. A stagger time between the first start time and the second start time is determined, where determining the stagger time comprises subtracting the first start time from the second start time. Id. at page 19, lines 4-5; Id. at page 21, lines 23-24. A segment of the program about equal in length to the stagger time is stored, where storing the segment comprises beginning to store the segment proximate to a user location before the user requests to view the program. Id. at page 21, lines 23-24.

6. Grounds of Rejection Presented for Review

Claims 1-20 stand rejected under 35 U.S.C. §102(e) as being anticipated by cited portions of U.S. Patent No. 6,018,359 to Kermode et al. (hereinafter "Kermode").

7. Argument

A. Whether claims 1-20 are anticipated by Kermode

The non-final Office Action has rejected claims 1-20 under 35 U.S.C. §102(e) as being anticipated by Kermode. For a valid anticipation rejection, the Office must show that each and every limitation from the claims appears in a single cited reference. Applicants strongly believe that Kermode does not teach "determining a stagger time between the first start time and the second start time" or storage of "a segment which is equal in length to the stagger time," as recited by all claims.

As understood by the Appellants, the Office Action seems to take the position that Figure 2, and accompanying text at Column 6, lines 14-36 discloses "a linear schedule with staggered start times." Office Action, page 2, last paragraph. The Office Action later states that "the stagger time between the first start time and the second start time is determined as t' - 0 or from 0 to t' (Fig. 2, and col. 6/lines 14-36)" Id. at page 3, lines 5-6. However, the text accompanying Figure 2 explicitly states, "Fig. 2 illustrates the distinction between synchronous and asynchronous modes of downloading." Kermode, Column 6, lines 19-21. A synchronous download begins only at the beginning of the data segment. Id. at Column 6, line 25. This is represented in Fig. 2 as channel P_S. One of Kermode's advances over the prior art was the ability to download a data segment asynchronously. Id. at Column 7, lines 21-44. Fig. 2 shows the advantage of using asynchronous downloads. If the system were ready to download at the time denoted by the left-most t', a synchronous system would wait unto time t_0 to begin downloading. Id. at Column 6, lines 24-26. Therefore, in a synchronous system, a download which took time t to complete would finish downloading at time t. By contrast, an asynchronous download begins at any point in the data segment. Id. at Column 6, lines 27-31. This is represented in Fig. 2 as channel P_A. If the asynchronous system were ready to download at the time denoted by the left-

most t', it would immediately begin downloading. The download would still take time t to download, but the download would be complete at the right-most t'.

The time specified by "t' - 0" is the time Kermode saves by downloading the data asynchronously as opposed to synchronously. In actuality, Kermode would never use both types of transmission. In fact, Kermode explicitly states that "the segments are not . . . downloaded synchronously." Id. at Column 7, lines 14-15. Since Kermode does not utilize synchronous downloading, the figure does not disclose "a linear schedule with staggered start times."

The Office action further cites Kermode as teaching "the segment or portion of video programs equal to the stagger time as noted is stored in a buffer storage." Office Action, page 3, lines 7-8. However, in actuality, Kermode discloses dividing video files into "sequentially organized data segments." Kermode, Column 4, lines 30-31. Each segment's relative size or length is a function of the number of the segment. Id. at Column 6, lines 46 - 55. The "first segment 0 has a relative length of 1," while subsequent segments have relative lengths "in accordance with the truncated Fibonacci sequence." Id. at Column 7, lines 12-15; Id. at Column 6, lines 46-60. The formula to determine the absolute segment length shows that the length of the initial segment is inversely proportional to the number of segments. Id. at Column 6, lines 47-53. In essence, the absolute length is completely independent of any "stagger time." Rather, the first segment's length depends on the number of segments. Id. at Column 6, line 66 - Column 7, line 5. If there are few segments, the relative size would be large. For example, in a situation where there are only 3 segments, the length of the first segment would be:

$$\frac{1}{1+2+3} = \frac{1}{6} \text{ of total data length}$$

When there are more segments, the first segment would be shorter. For example, in a situation where there are 7 segments, the length of the first segment would be:

$$\frac{1}{1+2+3+5+8+13+21} = \frac{1}{720} \text{ of total data length}$$

Therefore, the length of the initial segment is a function of the number of segments, while the lengths of the subsequent segments are function of the segment number. Id. at Column 6, lines 46-60.

The current claims, by contrast, recite in part "determining a stagger time between the first start time and the second start time" and "storing a segment of the program about equal in length to the stagger time." Application, Claim 1, line 7; Id. at Claim 10, lines 10-11; Id. at Claim 20, line 11. That is, the initial segment length is defined by the difference in the start time of a program on a first distribution conduit and the start time of a program on a second distribution conduit. Id. at Claim 1, lines 4-5; Id. at Claim 10, lines 4-7; Id. at Claim 20, lines 4-5. As discussed above, Kermode discloses a relative segment length that is solely dependent on the number of segments. Kermode does not disclose either "storing a segment of the program about equal in length to the stagger time" or "determining a stagger time between the first start time and the second start time."

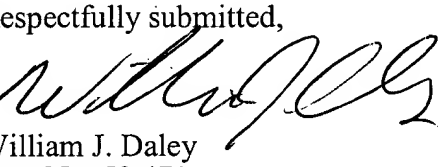
Applicants cannot agree that Kermode teaches the claims and requests reconsideration in light of the preceding argument.

8. Conclusion

Since a prior Appeal Brief was filed with the appropriate fee and prosecution was reopened prior to a decision by the Board, Applicants believe that no further fees are due. However, if a fee is required, the Commissioner is authorized to deduct such fee from the undersigned's Deposit Account No. 20-1430. Please deduct any additional fees from, or credit any overpayment to, the above-noted Deposit Account.

If for any reason the Office believes a telephone conference would in any way expedite resolution of the issues raised in this appeal, the Office is invited to telephone the undersigned attorney at (303) 571-4000.

Respectfully submitted,



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APPENDIX

The claims pending in the application are as follows:

1. (Previously Presented) A method for pre-storing a portion of a program distributed on a plurality of distribution conduits and in a linear schedule with staggered start times, the method comprising:

determining a first start time of the program on a first distribution conduit;

determining a second start time of the program on a second distribution conduit;

determining a stagger time between the first start time and the second start time;

storing a segment of the program about equal in length to the stagger time; and

detecting a user request to begin playing the program after the storing step has begun.

2. (Original) The method for pre-storing the portion of the program distributed on the plurality of distribution conduits and in the linear schedule with staggered start times as recited in claim 1, wherein at least one of the first and second distribution conduits comprises at least one of a digital channel and an analog channel.

3. (Original) The method for pre-storing the portion of the program distributed on the plurality of distribution conduits and in the linear schedule with staggered start times as recited in claim 1, wherein at least a portion of the first and second distribution conduits share a same channel.

4. (Original) The method for pre-storing the portion of the program distributed on the plurality of distribution conduits and in the linear schedule with staggered start times as recited in claim 1, wherein at least one of the first and second distribution conduits comprises a broadband network connection.

5. (Original) The method for pre-storing the portion of the program distributed on the plurality of distribution conduits and in the linear schedule with staggered start

times as recited in claim 1, wherein the determining the stagger time comprises subtracting the first start time from the second start time.

6. (Original) The method for pre-storing the portion of the program distributed on the plurality of distribution conduits and in the linear schedule with staggered start times as recited in claim 1, wherein the storing the segment comprises storing the segment at a user location.

7. (Original) The method for pre-storing the portion of the program distributed on the plurality of distribution conduits and in the linear schedule with staggered start times as recited in claim 1, wherein the storing the segment comprises storing the segment in a non-volatile manner.

8. (Original) The method for pre-storing the portion of the program distributed on the plurality of distribution conduits and in the linear schedule with staggered start times as recited in claim 1, wherein the storing the segment comprises storing the segment on a rotating disk.

9. (Original) The method for pre-storing the portion of the program distributed on the plurality of distribution conduits and in the linear schedule with staggered start times as recited in claim 1, further comprising recording the segment from the first distribution conduit.

10. (Previously Presented) A distribution program product for pre-storing a portion of a program distributed on a plurality of distribution conduits and in a linear schedule with staggered start times, the distribution program product comprising:

code for determining a first start time of the program on a first distribution conduit;

code for determining a second start time of the program on a second distribution conduit;

code for determining a stagger time between the first start time and the second start time;

code for storing a segment of the program about equal in length to the stagger time that begins storing the segment before a user requests the program; and

a computer-readable medium for storing the codes.

11. (Original) The distribution program product for pre-storing the portion of the program distributed on the plurality of distribution conduits and in the linear schedule with staggered start times as recited in claim 10, wherein at least one of the first and second distribution conduits comprises at least one of a digital channel and an analog channel.

12. (Original) The distribution program product for pre-storing the portion of the program distributed on the plurality of distribution conduits and in the linear schedule with staggered start times as recited in claim 10, wherein at least a portion of the first and second distribution conduits share a same channel.

13. (Original) The distribution program product for pre-storing the portion of the program distributed on the plurality of distribution conduits and in the linear schedule with staggered start times as recited in claim 10, wherein at least a portion of the first and second distribution conduits share a same transponder.

14. (Original) The distribution program product for pre-storing the portion of the program distributed on the plurality of distribution conduits and in the linear schedule with staggered start times as recited in claim 10, wherein at least one of the first and second distribution conduits comprises a broadband network connection.

15. (Original) The distribution program product for pre-storing the portion of the program distributed on the plurality of distribution conduits and in the linear schedule with staggered start times as recited in claim 10, wherein the code for determining the stagger time comprises code for subtracting the first start time from the second start time.

16. (Original) The distribution program product for pre-storing the portion of the program distributed on the plurality of distribution conduits and in the linear schedule with staggered start times as recited in claim 10, wherein the code for storing the segment comprises code for storing the segment at a user location.

17. (Original) The distribution program product for pre-storing the portion of the program distributed on the plurality of distribution conduits and in the linear schedule with staggered start times as recited in claim 10, wherein the code for storing the segment comprises code for storing the segment on a rotating disk.

18. (Original) The distribution program product for pre-storing the portion of the program distributed on the plurality of distribution conduits and in the linear schedule with staggered start times as recited in claim 10, further comprising code for recording the segment from the first distribution conduit.

19. (Original) The distribution program product for pre-storing the portion of the program distributed on the plurality of distribution conduits and in the linear schedule with staggered start times as recited in claim 10, wherein the code for storing the segment comprises code for storing the segment in a non-volatile manner.

20. (Previously Presented) A method for pre-storing a portion of a program distributed on a plurality of distribution conduits and in a linear schedule with staggered start times, the method comprising:

determining a first start time of the program on a first distribution conduit;

determining a second start time of the program on a second distribution conduit, wherein at least one of the first and second distribution conduits comprises at least one of a digital channel, an analog channel, a broadband network;

determining a stagger time between the first start time and the second start time, wherein the determining the stagger time comprises subtracting the first start time from the second start time; and

storing a segment of the program about equal in length to the stagger time, wherein the storing the segment comprises beginning to store the segment proximate to a user location before the user requests to view the program.